

Abusive Corporate Tax Shelters

Background Paper

IRS Large and Mid-Size Business

Background

Curbing abusive tax shelters is a priority for the Internal Revenue Service and Treasury Department. Developing a strategy to deal with abusive corporate tax shelters a major strategic initiative of Large and Mid-Size Business (LMSB).

LMSB's Office of Tax Shelter Analysis (OTSA) was established in February 2000 as a servicewide focal point for shelter compliance initiatives. OTSA is responsible for planning, coordinating and providing assistance to examiners working abusive tax shelter issues. It also serves as a clearinghouse for information that comes to the attention of the Service relating to potentially improper tax shelter activity by corporate and non-corporate taxpayers.

Salient Points

- Corporate tax shelters cost the federal government billions of dollars each year.
- Curbing abusive tax shelters is an area of focus and priority for the Internal Revenue Service (including all Divisions), Counsel and the Treasury Department--reflecting a continued cooperative effort and commitment to address these transactions. The goal is early identification and effective action on abusive tax shelters.
- IRS currently is pursuing promoters to secure investor lists and to open up investigations where promoters have failed to register.
- IRS is participating in numerous information-sharing meetings with professional associations such as the American Institute of Certified Public Accountants and the American Bar Association.
- Abusive corporate tax shelters have been identified as a strategic initiative for LMSB
- Goals of the strategic initiative include:
 - Ensure coordination of abusive tax shelter cases with LMSB, Appeals, Counsel and Treasury
 - Improve communications with LMSB, Appeals, Counsel and field resources
 - Provide training and education to Revenue Agents
 - Identify improved legal ramifications against promoters of abusive corporate tax shelters

Communication and Education

- IRS conducted 32 Continuing Professional Education (CPE) sessions in FY2000.
- IRS is currently training all LMSB Agents on abusive tax shelters in CPE FY2001.
- Specific training and briefings have been conducted on an as needed basis.
- OTSA is developing an Audit Techniques Guide.

Expanded Disclosure Rules

A critical part of the overall strategy is deterring the promotion of abusive corporate tax shelters through expanded disclosure rules including the following:

Registering Shelters: Shelter promoters are required to apply for a unique registration number for each tax shelter. The registration number enables the IRS to trace transactions that it considers were structured primarily for tax avoidance or evasion.

- Promoters are required to register tax shelters with the IRS under IRS Sections 6111 (c) and 6111 (d).
- All registrations are reviewed upon receipt for completeness. Promoters are requested to provide missing information. Forms 8264 that are complete are issued a Tax Shelter Registration number. All Tax Shelter Registrations are entered into a database and a hard copy is filed. Issue Experts, on a periodic basis, classify all registrations.

Keeping Investor Lists and Promotion Material: Promoters are required to keep a list of the corporations that buy their shelters as well as the promotional material used to sell the shelter. Both the list and promotional material need to be available for inspection by the IRS upon request.

Sources of Information for Promoter/Investigations:

Type	Number
Disclosure Statements	12
Tax Shelter Registrations	7
Tax Shelter Hotline	5
LMSB Examinations	7
Other	<u>2</u>
	33

Providing Disclosure Statements: Corporations that purchase certain transactions the IRS considers to be potentially abusive are required to outline the transaction in a statement that is provided to the Office of Tax Shelter Analysis (OTSA) and attached to their income tax return. Generally, these are transactions that can reduce tax liabilities by more than \$5 million in a year or are one of transactions the IRS has published in guidelines as "listed transactions."

Disclosure Statements (under Treasury Regulations 1.6011.4T): Corporate taxpayers (promoters) are required to disclose their participation in “reportable transactions” by attaching a statement to their income tax return. For the first taxable year, a statement must also be filed with OTSA. A Senior Agent and Manager of OTSA receives all Disclosure Statements. Requests for assistance in evaluation are made to Senior Legal Counsel – Tax Shelter LMSB Counsel.

Disclosure Statement Statistics (as of June 19, 2001):

- 86 Disclosure Statements
- 62 Transactions listed under IRS Notice
- 34 Taxpayers filed
- \$1.3 billion tax savings reported in 1999
- \$667 million tax savings reported in 2000
- \$5.9 billion total tax savings all years
- 45 Disclosure Statements have been sent to Industry Directors

Other Tools

Persons wishing to submit information relating to tax shelter transactions and activities may contact the “**Tax Shelter Hotline**” via mail, telephone, fax or e-mail:

Mailing Address:
Internal Revenue Service
Office of Tax Shelter Analysis
LM:PFT:OTSA
1111 Constitution Avenue, NW
Washington, DC 2022

Telephone Number: (202) 283-8740
Fax Number: (202) 283-8354
E-mail Address: irs.tax.shelter.hotline@irs.gov

OTSA Hotline (Earlier Identification of Issues)

Pursuant to its function as a clearinghouse for information to the Service relating to potentially improper tax shelter activity by corporate and non-corporate taxpayers, OTSA maintains a Tax Shelter Hotline. This Hotline provides a conduit for persons wishing to submit information to the IRS relating to particular tax shelter transactions.

A Senior Agent evaluates information that is received by the Hotline. Information that requires compliance follow-up is forwarded to the appropriate Operating Division (i.e., SB/SE or LMSB Industry Director).

Hotline Statistics (as of June 15, 2001):

- 302 call and e-mails received
- 143 calls and e-mails received
- 104 individuals
- 15 corporate/individuals

- 18 corporate
- 6 trust
- 159 calls and e-mails pertaining to requests for other information

Several notable tax shelters were identified through referrals made to the hotline:

- Anonymous Informant 15 LILLO Investors - \$4.4 billion investment
- A SBSE Promoter with a significant number of individual investors
- 3 different Promoter presentation packages that are currently being considered for an Internal Revenue Service Notice
- Information Source for five Promoter soft letters

Tax Shelter Survey (In process Inventory)

OTSA conducted a survey of the LMSB field groups in October 2000 and Identified the current in-process inventory. The survey assists in workload planning, issue coordination, and emerging issue identification. Included in the survey were:

- 253 taxpayers
- 336 issues
- \$12.5 billion in potential tax

Tax Shelter Promoters

The Tax Shelter Committee (formerly Promoter Steering Committee) has approved the issuance of 28 letters to 22 different promoters, including:

Accounting Firms	7
Bank/Security Firms	7
Other Promoters	<u>14</u>
	28

Field Assistance and Issue Coordination

Technical Advisors (Issue Specialists) have been established for each listed transaction. The Technical Advisors provide assistance in identifying, developing and coordinating the various issues. OTSA currently has five Senior Program Analyst (Agents) and nine Technical Advisors. Other Technical Advisors are assigned in several Pre-Filing and Technical Guidance Groups.